

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-79V

ROBERT PHONEPRASITH,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: October 6, 2023

Jerome A. Konkell, Samster, Konkell & Safran, S.C., Milwaukee, WI, for Petitioner.

Jennifer A. Shah, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 27, 2022, Robert Phoneprasith filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered a left shoulder injury related to vaccine administration (“SIRVA”), a defined Table injury or, in the alternative caused-in-fact injury, after receiving an influenza (“flu”) vaccine on October 17, 2019. Petition at 1, ¶¶ 2, 11-12. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 31, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On October 3, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$50,000.00 of damages for pain and suffering. Proffer at 1. In the Proffer, Respondent represented that Petitioner

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$50,000.00 (of damages for pain and suffering) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
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SECRETARY OF HEALTH AND
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No. 22-79V

Chief Special Master Corcoran
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RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On January 27, 2022, Robert Phoneprasith (“petitioner”) filed a Petition (“Petition” or “Pet.”) for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (the “Vaccine Act” or “Act”), 42 U.S.C. §§ 300aa-1 to -34. Petitioner alleged that he suffered a Shoulder Injury Related to Vaccination Administration following the administration of an influenza vaccination, and that his injury meets the criteria for compensation pursuant to the Vaccine Injury Table. Petition at 5.

On August 30, 2023, respondent filed his Vaccine Rule 4(c) report, recommending that compensation be awarded. ECF No. 25. On August 31, 2023, this Court issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 26.

I. Items of Compensation

Respondent proffers that petitioner should be awarded **\$50,000.00** of damages for pain and suffering. This represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following¹: a lump sum payment of **\$50,000.00**, representing compensation for all elements of economic and noneconomic damages, in the form of a check payable to petitioner, Robert Phoneprasith.

III. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Robert Phoneprasith: **\$50,000.00.**

Respectfully submitted,

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Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

LARA A. ENGLUND
Assistant Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

s/ Jennifer A. Shah

Jennifer A. Shah

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Dated: October 3, 2023